IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
ALTA+CAST, LLC,	)	Case No. 02-12982(MFW)
	)	
Debtor.	)	

AMENDED MEMORANDUM OPINION[1]

Before the Court is the Debtor's request for confirmation of its Modified Second Amended Plan of Reorganization ("the Plan"). An objection to confirmation of the Plan and a Motion to dismiss, convert or appoint a trustee was filed by Hays ("Hays"). For the reasons stated below, we deny Hays' Motion, overrule most of his objections and will confirm the Plan, if it is modified in accordance with this opinion.

I. FACTUAL BACKGROUND

Alta+Cast, LLC ("the Debtor") was formed in early 1996 to provide information technology to physicians and other healthcare providers. Neither the Debtor nor its wholly owned subsidiary, Health+Cast, LLC, have ever generated a profit in their history and have in fact spent over $18 million in invested capital.

In early 1999, disagreements arose between the Debtor and

[1] This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, which is made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014.

Hays about his continued rights under an Employment Agreement with the Debtor.[2] On August 17, 1999, Hays sued the Debtor in the United States District Court for the District of Idaho, asserting that the Debtor had breached Hays' Employment Agreement and alleging damages in excess of $12 million ("the Idaho Action").

As a result its inability to operate profitably and the Hays dispute, the Debtor was unable to raise additional equity to continue its business. On October 10, 2002, the Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its property as debtor in possession.

Hays was granted relief from the stay to conclude the Idaho Action. On August 28, 2003, the jury returned a special verdict in favor of Hays in the amount of $2,260,000 plus interest from the date of termination. Subsequent to the jury verdict, we held a hearing to determine the allowance and priority of Hays' claim. Briefs were filed by the Debtor and Hays. On October 24, 2003, we issued a decision ("the Hays Decision") in which we concluded that the Hays' claim must be subordinated pursuant to section 510(a) and (b) to all general unsecured claims and given the same priority as the other ownership interests in the Debtor.

[2] The factual background to Hays' claims is contained in our Opinion and Order dated October 24, 2003.

Thereafter, the Debtor proceeded to seek confirmation of its Plan, which was originally filed on February 28, 2003, and amended on May 12, 2003, and January 7, 2004. The Debtor's Plan provides for full payment in cash of the priority claims and the secured claim of Chase Manhattan Bank.[3] The other secured creditor classes (which include shareholders and officers of the Debtor) will receive stock in exchange for their claims. The non-insider general unsecured creditors in Class 8 are given the option to receive a pro rata share of $50,000 (an estimated recovery in excess of 20% if all creditors choose the cash option) or stock in the reorganized Debtor. The shareholders and Hays will receive no distribution under the Plan for their unsecured claims or ownership interests. The Plan will be funded by an infusion of working capital by some of the existing shareholders and a new outside investor.

All of the claimants, in classes voting on the Plan, voted in favor of the Plan. (Exhibit D-17) The shareholders and Hays were deemed to have rejected the Plan. 11 U.S.C. § 1126(g). Notwithstanding this, 20 shareholders voted in favor and only 1 voted against the Plan.

A confirmation hearing was held on January 8, 2004, at which Hays was the sole objector. The parties have filed post-hearing

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[3] However, the claimants in Class 1 (who are officers of the Debtor) have agreed to defer (for up to two years) receiving any payment until the Debtor has sufficient cash.

briefs and the matter is ripe for decision.

II. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A), (L) & (O).

III. DISCUSSION

The Debtor presented testimony and exhibits addressing each of the Code's requirements for plan confirmation. We conclude that the record made by the Debtor evidences that the Plan satisfies all the requirements of the Code. We address here in depth only the specific areas raised by Hays. Otherwise, our findings of fact and conclusions of law will be delineated in the Confirmation Order entered contemporaneously herewith.

A. Improper Classification of Hays' Claim

Hays objects to the classification of his claim in Class 10. He asserts that his claim should be placed in Class 8 with the general unsecured claims. This issue, however, was resolved in the Hays Decision where we concluded that his claim was subordinated to all creditors' claims pursuant to section 510(a) and (b). Therefore, the Debtor acted properly by placing his claim in a class separate from the general unsecured creditors. See 11 U.S.C. § 1122(a) ("a plan may place a claim or an interest in a particular class only if such claim or interest is

substantially similar to the other claims or interests of such class").

B. Third Party Releases of Non-Debtors

Hays objects to the release of any claims he may have against any non-debtors, including specifically directors and officers of the Debtor. The Plan contains no release of actions against non-debtors. Further, since Hays has not consented to it, the Debtor acknowledges that no such release would be binding on Hays in any event.

C. Acceptance of the Plan

Hays objects on the grounds that no impaired class of non-insiders has accepted the Plan. This is incorrect. All classes accepted the Plan, except the two classes (10 and 11) which are deemed to have rejected the Plan. In fact, the non-insiders of Class 8 (an impaired class) unanimously accepted the Plan. Therefore, the requirement of section 1129(a)(8) has been met.

D. Good Faith

Hays asserts that the Plan does not comply with section 1129(a)(3) because it has not been proposed in good faith. Specifically, Hays asserts that the bankruptcy and Plan are merely an effort to eliminate Hays' claim. As such, he asserts confirmation should be denied and the case should be dismissed. See, e.g., In re SGL Carbon Corp., 200 F.3d 154 (3d Cir. 1999) (dismissing case where only purpose was to frustrate efforts of

parties with antitrust litigation against the debtor).

We conclude that this case is distinguishable from SGL Carbon and that neither the Debtor's chapter 11 petition nor the Plan were filed in bad faith. In SGL Carbon, the debtor was financially healthy and had a strong balance sheet when it filed its chapter 11 petition. 200 F.3d at 163, 166. In this case, the Debtor had severe financial difficulties long before it filed its petition.

The Debtor presented the testimony of Ms. Mehn who described the poor financial condition of the Debtor which led to its filing under chapter 11. The Debtor never had a profit in its entire life and was constantly required to raise capital to survive. In recent years the Debtor was unable to raise equity and had to rely on loans from insiders to meet its operating expenses, including payroll.

Hays notes that immediately before filing its petition, the Debtor had more cash in the bank than ever. He asserts that filing for bankruptcy was not necessary. However, the Debtor's improved cash status was the result of a loan from insiders made on the eve of the filing that enabled the Debtor to make its payroll. Additionally, that loan was extended with the expectation that the chapter 11 petition would be filed and a Plan proposed that would restructure the Debtor's balance sheet. Despite the cash in the bank, the Debtor's desperate financial

condition was evident.

The SGL Carbon Court also found that the debtor filed bankruptcy solely as a litigation tactic to frustrate the antitrust claimants. Id. at 167. This was evidenced by the fact that the plan of reorganization proposed to pay all creditors in full, except for the antitrust claimants. Id. That is clearly not the case here. The Debtor's plan provides for the issuance of equity to all creditors, with the option for unsecured creditors to take a pro rata share of $50,000 (or an estimated recovery in excess of 20% of their claims if all unsecured creditors choose that option).

While the Debtor did file its petition in part because of Hays' suit, the SGL Carbon Court did "not hold that a company cannot file a valid Chapter 11 petition until after a massive judgment has been entered against it." Id. at 164. The Court further noted that "Courts have allowed companies to seek the protections of bankruptcy when faced with pending litigation that posed a serious threat to the companies' long term viability." Id.

In this case, the Debtor presented evidence establishing that the Hays' litigation was a threat not only to its long term viability but also its short term ability to raise capital and operate its business. Ms. Mehn testified that potential investors were concerned with the Hays' litigation and that the

trial necessitated the attention of senior management who should have been attending to the Debtors' operations. Consequently, we conclude that the Debtor has established that its chapter 11 filing was done in good faith.

Hays asserts, however, that even if the Debtor is permitted to file a chapter 11 petition, the Plan shows its bad faith. Hays argues that the Plan is designed solely to protect the Debtor's insiders and assure that they receive all the equity in the company, which he asserts is grossly undervalued by the Debtor. He also points to the potential preferences in excess of $700,000 which the Debtor may have against the insiders. (Exhibit D-6) He argues that the entire purpose of the chapter 11 proceeding and Plan is to eliminate his and other creditors' claims and give control of the Debtor to the insiders. He asserts this is bad faith and a breach of the Debtor's fiduciary duty.

We disagree with Hays' analysis. The Debtor's poor financial condition is what mandates that the Plan give stock, instead of cash, to creditors. Further, the Plan does not give all the equity to the insiders. All creditors, except Hays and Chase Manhattan, are given the opportunity to get equity in the Debtor. Because Hays' claim is subordinated and the creditors ahead of him are not getting paid in full, the fact that he is not getting any recovery under the Plan does not mean it has been

filed in bad faith. The Debtor's Plan is consistent with its limited financial abilities and is typical of plans of reorganization. Thus, we conclude that the Plan is not filed in bad faith.

E. Absolute Priority Rule

Hays also asserts that the Plan violates the provisions of section 1129(b) because its only intent is to eliminate his rights. He notes that all other parties are given an opportunity to invest in the Debtor except him. Specifically, he objects to the shareholders, who are in the class below him, being given the opportunity to invest in the reorganized Debtor while he is not. He argues this violates the mandate of the Supreme Court in Bank of Am. v. 203 North LaSalle St. P'ship, 526 U.S. 434 (1999).

Hays' factual assertions are inaccurate. The Plan does not give the shareholders, qua shareholders, the right to invest in the reorganized Debtor. Instead, only creditors are given that opportunity. Although some of the creditors are also shareholders, the Plan is permitting them to invest only on account of their claims, not on account of their shareholder interests.

Because Hays' claim has been subordinated by section 510(a) and (b), he does not have the same rights as the other secured or unsecured creditors. Further, no party with a junior interest (namely, the shareholders) is receiving or retaining anything

under the Plan. Therefore, the treatment of his claim under the Plan comports with the Code. 11 U.S.C. § 1129(b)(2)(B) & (C).

Hays also asserts that LaSalle mandates that the Debtor must be exposed to the market and that non-insiders should be afforded the opportunity to invest. To the extent that Hays is asserting that LaSalle requires all chapter 11 debtors be sold, we disagree. The Supreme Court objected to the LaSalle plan's grant to shareholders of an exclusive right to invest in the debtor, but it did not require that the debtor be liquidated. In this case, the Debtor is permitting all unsubordinated creditors, as well as outsiders, to invest. This meets the mandate of LaSalle.

Hays also asserts that the Debtor's own chapter 7 expert acknowledged that the chapter 7 trustee had a fiduciary duty to market Health+Cast. He asserts that the Debtor in this chapter 11 case has the same fiduciary duty. That is incorrect. A chapter 7 trustee has the duty to liquidate all assets and distribute the proceeds to creditors. 11 U.S.C. § 704(1) ("The trustee shall - (1) collect and reduce to money the property of the estate. . . and close such estate as expeditiously as is compatible with the best interests of parties in interest"). In fact, it is rare that a chapter 7 trustee is even authorized to operate the debtor's business. 11 U.S.C. § 721 ("the court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the

estate and consistent with the orderly liquidation of the estate").

In contrast, a chapter 11 debtor is automatically authorized to operate its business. 11 U.S.C. § 1108. Reorganization, as opposed to liquidation, is the favored result in a chapter 11 case. See, e.g., NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation") ; In re Continental Airlines, 91 F.3d 553, 571 (3d Cir. 1996); Jacobson v. AEG Capital Corp., 50 F.3d 1493, 1502 (9th Cir. 1995). Thus, we conclude that the Debtor's Plan, which seeks to restructure its debt in accordance with the priority schemes of the Bankruptcy Code, is consistent with the absolute priority rule articulated in section 1129(b).

F. Liquidation Analysis

Hays also argues that he has not accepted the Plan and that he is not receiving as much as he would if the Debtor were liquidated under chapter 7. 11 U.S.C. § 1129(a)(7). He asserts that the value of the Debtor is considerably greater than the Debtor asserts.

The evidence presented at the confirmation hearing, however, does not support Hays' argument. The Debtor presented two experts; one a business valuation expert and the other an expert on the costs and likely recoveries in a chapter 7 liquidation.

Although Hays sought to discredit both experts' testimony, we found both to be credible. Notably, Hays presented no valuation witness to counter the Debtor's witnesses.

1. Valuation

Hays asserts that the Debtor's valuation expert had no expertise in the software industry and therefore was not capable of valuing the Debtor. However, the expert was eminently qualified in business valuations, being one of only 44 master certified business appraisers. One need not be an expert in a particular industry to provide a valuation of a company in that industry. The Debtor's expert followed widely accepted methods of determining the enterprise value of a business.

Hays also argues that the Debtor's expert valued the Debtor's subsidiary (Health+Cast) instead of the Debtor. He asserts that the Debtor is worth more than just the value of its subsidiary because the Debtor owns the software. Further, he argues that in reaching his valuation of no more than $850,000, the expert ignored the fact that Health+Cast has almost $5 million in contracts.

We disagree. The Debtor's expert testified that he did consider the $5 million in contracts because they were contained in the Debtor's cash flow projections. (Apparently, Hays would have us ignore the obvious costs associated with the contracts.) Further, while the Debtor owned software which may have

applications in other industries, the evidence presented by the Debtor establishes that the software has only been used in the healthcare industry. The Debtor is not using it or receiving revenues from that asset except through Health+Cast. Nor is there any evidence that the Debtor has any realistic prospect of expanding the sale or use of the software outside the healthcare industry. Therefore, we agree with the Debtor's expert that the current value of the Debtor is essentially the value of its subsidiary, which was properly valued between -$250,000 and +$850,000.

Hays argues, however, that the expert's valuation should be discredited because he testified in the Idaho litigation that the value of the Debtor in 1999 was only $340,000 while the jury concluded that it was worth $20 million. However, that valuation was as of 1999, the height of the technology boom and before the Debtor suffered through another four years of losses. Further, we do not know what evidence was presented to the jury nor the basis for their conclusion. We can only make a decision based on the evidence before us. That evidence consisted of the historical performance of Health+Cast and its projected performance. Based on the evidence presented and the methodology used by the Debtor's expert, we conclude that the expert's valuation was credible.

2. Liquidation Value

The Debtor also presented an expert who testified about the anticipated costs that would be incurred if the case were converted to chapter 7. Because the Debtor is a holding company, the trustee would seek to sell the stock in the subsidiary as a going concern. However, the expert opined that additional costs incurred by the trustee (between $156,000 and $473,000) would erode the value available to creditors. After the DIP loan and pre-petition secured lenders[4] were paid, there would be insufficient funds to pay the chapter 11 administrative fees (currently estimated to be $550,000) and result in the unsecured creditors receiving nothing. Even if the Debtor was able to recover the alleged insider preferences (totaling $700,000), there would still be insufficient funds to pay all creditors whose claims have priority over Hays' claim. Therefore, we conclude that the Debtor has satisfied section 1129(a)(7) of the Code.

G. Conflict of Interest

Hays also asserts that the Debtor's counsel is not disinterested because, under the Debtor's most recent

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[4] Hays asserts that many of the secured loans were perfected within the preference period and are subject to avoidance. Even if that were true, they would still be claims superior to Hays' subordinated claim and must be paid before him. He also asserts that insiders were given preferential treatment by allowed them to extend loans to the Debtor which gave them conversion rights or allowing them to convert debt to equity. This is irrelevant, since the equity and conversion rights are now worthless.

modification of the Plan, counsel will receive stock in the reorganized Debtor. The Debtor counters that the Debtor does not have sufficient cash to pay its counsel's administrative claim in full and counsel has agreed to take stock as an accommodation to the Debtor.

We conclude that the provision in the Plan offering stock to counsel for the Debtor does not mean counsel is not disinterested. Counsel is not currently a shareholder. Further, the fact that the Debtor is unable to pay all administrative claims in cash is a further indication of its need for reorganization. Thus, we conclude that this provision in the Plan does not make it unconfirmable.

H. Extinguishment of Setoff Rights

Hays also complains that the Plan improperly extinguishes any setoff rights he may have. We do agree with this argument. While Hays' claim may be extinguished affirmatively, there is no basis in the Code to eliminate his setoff rights.[5] In fact section 553 expressly preserves whatever setoff rights Hays may have under state law.

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[5] A plan of reorganization may eliminate a creditor's right of setoff if not raised until after confirmation. See, e.g., In re Continental Airlines, 134 F.3d 536 (3d Cir. 1998). In this case, however, Hays asserted his right to setoff prior to confirmation and is entitled to preserve them. See, e.g., In re Phoenix Petroleum, 278 B.R. 385, 400 (Bankr. E.D. Pa 2001). Notably, the Debtor has not identified in its Plan any claims it has against Hays and, consequently, may be waiving those.

IV. CONCLUSION

For the foregoing reasons we overrule Hays' objection and will confirm the Debtor's Modified Second Amended Plan of Reorganization, eliminating Article 12.1 as it applies to Hays.

An appropriate Order will be entered.

BY THE COURT:

Dated: March 9, 2004

Mary F. Walrath
United States Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	CHAPTER 11
ALTA+CAST, LLC, Debtor.	)	CASE NO. 02-12982 (MFW)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER UNDER 11 U.S.C. § 1129(a) and (b) AND FED. R. BANKR. P. 3020 CONFIRMING MODIFIED SECOND AMENDED PLAN OF REORGANIZATION OF ALTA+CAST, LLC UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

WHEREAS, Alta+Cast, LLC (**"Alta Cast"** or the **"Debtor"**) as "proponent of the plan" within the meaning of section 1129 of title 11 of the United States Code (the **"Bankruptcy Code"**), filed the *Modified Second Amended Plan of Reorganization of Alta+Cast LLC* , dated January 7, 2004 (as amended, modified or supplemented including by this Order, the **"Plan"**, which Plan modified the *Second Amended Plan of Reorganization of Alta+Cast LLC*, dated June 9, 2003)[1]; together with the *Disclosure Statement with Respect to the Second Amended Plan of Reorganization of Alta+Cast LLC,* dated June 9, 2003 (as transmitted to parties in interest, the **"Disclosure Statement"**);

WHEREAS, on June 10, 2003, the Bankruptcy Court entered an order (the **"Solicitation Order"**) that, among other things, (a) approved the Disclosure Statement under section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, (b) established August 21, 2003 date as the date for commencement of the hearing to consider confirmation of the Plan (the

[1] Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan, a copy of which is annexed hereto as Exhibit "A." Any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

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"Confirmation Hearing"), (c) approved the form and method of notice of the Confirmation Hearing (the **"Confirmation Hearing Notice"**), and (d) established certain procedures for soliciting and tabulation of votes with respect to the Plan;

WHEREAS, the Solicitation Order was transmitted as set forth in the *Certification of Service* filed on June 23, 2003, and such service is adequate as provided by Bankruptcy Rule 3017(d);

WHEREAS, the Court on June 24, 2003 extended the Debtor's exclusive period in which to file a Chapter 11 Plan and to Solicit Votes Thereon until September 15, 2003;

WHEREAS, the Debtor filed its *Report of Plan Voting on Debtor's Second Amended Plan of Reorganization* on July 25, 2003, stating the method and results of the ballot tabulation for the Classes of Claims (Classes 1,2,4,5,6,8,9 and 11), entitled to vote to accept or reject the Plan (the **"Voting Report"**);

WHEREAS, only one (1) objection to confirmation of the Plan was filed, the *Objection of Mark Hays to Confirmation of Debtor's Amended Plan of Reorganization* (the **"Objection"**);

WHEREAS, the Confirmation Hearing was held on January 8, 2004;

WHEREAS, the Court heard cross-examination and argument in support of the Objection at the Confirmation Hearing;

WHEREAS, the Debtor and Mark Hays submitted written closing arguments on January 16, 2004 (the **"Written Closings"**);

WHEREAS, the Objection is overruled on the merits pursuant to ~~this~~ the Opinion issued contemporaneously herewith and pursuant to the terms of this Confirmation Order;

NOW, THEREFORE, based upon the Bankruptcy Court's review of the Voting Report and the Plan; and upon (a) all the evidence proffered or adduced at, and the Objection filed in connection with, and arguments of counsel made at, the Confirmation Hearing and through the Written Closings; and (b) the entire record of the Alta Cast Reorganization Case; and after due deliberation thereon and good cause appearing therefore:

FINDINGS OF FACT AND CONCLUSIONS OF LAW[2]

IT IS HEREBY FOUND AND DETERMINED THAT:

1. Exclusive Jurisdiction: Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2), 1334(a)). This Bankruptcy Court has jurisdiction over the Alta Cast Reorganization Case pursuant to section 157 and 1334 of Title 28 of the United States Code. Venue is proper pursuant to section 1408 and 1409 of Title 28 of the United States Code. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and this Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

2. Judicial Notice. This Bankruptcy Court takes judicial notice of the docket of the Alta Cast Reorganization Case maintained by the Clerk of the Bankruptcy Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and evidence and arguments made, proffered, or adduced at the hearing held before the Bankruptcy Court during the pendency of the Alta Cast Reorganization Case, including but not limited to, the hearing to consider adequacy of the Disclosure Statement.

3. Burden of Proof. The Debtor has satisfied the burden of providing the elements of section 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

[2] Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

4. Transmittal and Mailing of Material; Notice. The Disclosure Statement, the Plan, the Ballots, the Solicitation Order, and the Confirmation Hearing Notice shall be deemed to have been transmitted and served in compliance with the Solicitation Order and the Bankruptcy Rules, such transmittal and service were adequate and sufficient, and no other or further notice is or shall be required

5. Voting. Votes to accept and reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Solicitation Order and industry practice.

6. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

(a) Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). The Plan designates eleven (11) Classes of Claims and Equity Interests. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between holders of Claims and Equity Interests. The Plan satisfies section 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article 4 of the Plan specifies that Classes 2, 3 and 7 are unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(c) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article 3 of the Plan designates Classes 1,2,4-6,8,9 and 11 as impaired and Article 7 of the Plan

specifies the treatment of Claims and Equity Interests in those Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(d) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtor for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan provides adequate and proper means for the Plan's implementation, including (i) the issuance of new interests, (ii) the sale of assets, (iii) no application of transfer taxes, and (iv) the release of liens, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

(f) Designation of Officer, Directors or Trustees (11 U.S.C. § 1123(a)(7)). Article 8 of the Plan and the representations on the record of the Confirmation Hearing with respect to the selection of the Management Team are consistent with the interests of creditors, equity security holders and public policy in accordance with section 1123 (a)(7) of the Bankruptcy Code.

(g) Additional Plan Provisions (11 U.S.C. § 1123(b). The Plan's provisions are appropriate and not inconsistent with the application of provisions of the Bankruptcy Code.

(h) Bankruptcy Rule 3016(a). The Plan is dated and identifies the entity submitting it as the proponent, thereby satisfying Bankruptcy Rule 3016(a).

7. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtor has complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

(a) The Debtor is a proper debtor under section 109 of the Bankruptcy Code.

(b) The Debtor has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court.

(c) The Debtor has satisfactorily complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Order in transmitting the Plan, the Disclosure Statement, the Ballots and related documents and notices and in soliciting and tabulating votes of the Plan.

8. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtor's good faith is evident from the facts and records of the Alta Cast Reorganization Case, the Disclosure Statement and the hearing thereon, the record of the Confirmation Hearing and other proceedings held in the Alta Cast Reorganization Case. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtor's estate by providing the means through which the Reorganized Debtor may emerge from chapter 11 as a viable operating entity.

9. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the Alta Cast Reorganization Case, or in connection with the Plan and incident to the Alta Cast Reorganization Case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

10. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. At the Confirmation Hearing,

the Debtor disclosed the identity and affiliations of the persons proposed to serve on the Management Team of the Reorganized Debtor after confirmation of the Plan. In addition, the appointment to, or continuance in, such offices of such persons in consistent with the interests of holders of Claims against and Equity Interests in the Debtors and with public policy. The identity of any insider that will be employed or retained by the Reorganized Debtor and the nature of such insider's compensation has also been fully disclosed.

11. No Rate Changes (11 U.S.C. § 1129(a)(6)). After confirmation of the Plan, the Reorganized Debtor's business will not involve rates established or approved by, or otherwise subject to, any governmental regulatory commission. Thus, section 1129(a)(6) of the Bankruptcy Code is not applicable to the Alta Cast Reorganization Case or with respect to the Plan.

12. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis evidence proffered or adduced at the Confirmation Hearing (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) established that each holder of an impaired Claim or Equity Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.

13. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Classes 2, 3 and 7 of the Plan are Classes of unimpaired Claims and Interests that are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Classes 4,5,6,8, and 9 have voted to accept the Plan in accordance with section 1126(c) and (d) of the Bankruptcy

Code. The claimant in Class 10 did not vote and therefore is deemed to have rejected the Plan (the **"Rejected Class"**). Although section 1129(a)(8) has not been satisfied with respect to the Rejected Class, the Plan is confirmable because the Plan satisfied section 1129(b) of the Bankruptcy Code with respect to the Rejected Class.

14. Treatment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Expenses Claims and Other Priority Claims pursuant to Articles 5, 6 and 7 of the Plan, satisfies the requirement of sections 1129 (a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Priority Tax Claims pursuant to Article 6.2 of the Plan satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

15. Acceptance By Impaired Classes (11 U.S.C. § 1129(a)(10)). At least one Class of Claims against the Debtor that is impaired under the Plan has accepted the Plan, determined without including any acceptances of the Plan by any insider, thus satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

16. Feasibility (11 U.S.C. § 1129(a)(11)). The Disclosure Statement and the evidence proffered or adduced at the Confirmation Hearing (a) are persuasive and credible, (b) have not been controverted by other evidence, and (c) establish that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtor thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

17. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under section 1930 of title 28 of the United States Code (the "Quarterly Fees"), as determined by the Bankruptcy Court, have been paid or will be paid pursuant to Article 13.1 of the Plan by the

Debtors on or before the closing of Debtor's case, thus satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

18. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Reorganized Debtor's business does not provide for retiree benefits. Thus, section 1129(a)(13) of the Bankruptcy Code is not applicable to the Alta Cast Reorganization Case or with respect to the Plan.

19. Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b)). Based upon the evidence proffered, adduced, or presented by the Debtor at the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejected Class, as required by section 1129(b)(1) and (2) of the Bankruptcy Code. Thus, the Plan may be confirmed notwithstanding the Debtor's failure to satisfy section 1129(a)(8) of the Bankruptcy Code. Upon confirmation and the occurrence of the Effective Date, the Plan shall be binding upon the member of the Rejected Class.

20. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, as amended.

21. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Bankruptcy Court in the Alta Cast Reorganization Case, the Debtor and their respective Management Team, employees, agents, counsel or other professionals have acted in "good faith" within the meaning of section 1125 (e) of the Bankruptcy Court in compliance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules in connection with all their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled

to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Article 13.12 of the Plan.

22. Assumption. Article 10 of the Plan governing the assumption and rejection of executory contracts and unexpired leases satisfies the requirements of section 365(a) and (b) of the Bankruptcy Code. The assumption of those executory contracts and unexpired leases to be assumed on the Effective Date in accordance with the Plan is in the best interest of the Debtor, its estate and all parties in interest in the HIS Reorganization Case. The Plan and this Confirmation Order each adequately provide for the timely payment of cure amounts in Cash in accordance with section 365(b)(1) of the Bankruptcy Code.

23. Rejection. The executory contracts and unexpired leases of the Debtor to be rejected on the Effective Date in accordance with the Plan are burdensome and, as such, the rejection thereof is in the best interests of the Debtor, its estate, and all parties in interest in the Alta Cast Reorganization Case.

24. Satisfaction of Confirmation Requirements. The Plan satisfies that requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

25. Retention of Jurisdiction. The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article 14 of the Plan and section 1142 of the Bankruptcy Code.

DECREES

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREE THAT:

26. Technical Amendments. The modifications and clarifications to the Plan set forth herein meet the requirements of sections 1127(a) and (c) of the Bankruptcy Code and such modifications and clarifications do not adversely change the treatments of the Claim of any

creditor or Equity Interest of any holder thereof within the meaning of the Bankruptcy Rule 3019, and no further disclosure, solicitation or voting is required.

27. Confirmation. The Plan is approved and confirmed under section 1129 of the Bankruptcy Code.

28. Objections. The Objection has not been withdrawn, waived, or settled, and all reservations of rights pertaining to confirmation of the Plan included therein, are overruled on the merits.

29. Other Plan Documents. All documents and agreements related to the Plan or to consumption and implementation of the Plan and any other documents and agreements introduced into evidence by the Debtor at the Confirmation Hearing (including Exhibits and attachments thereto and documents referred to therein), and the execution, delivery and performance thereof by the Reorganized Debtor are authorized and approved.

30. Binding Effect. The Plan and its provisions shall be binding upon the Debtor, any person or entity acquiring or receiving property as a distribution under the Plan, and any holder of a Claim against or Equity Interest in the Debtor, including all governmental entities, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not the holder or entity has accepted the Plan.

31. Transmittal of Material; Notice. The transmittal and service of the Disclosure Statement, the Plan, the Ballots, the Solicitation Order, the Confirmation Hearing Notice as set forth in their respective Certificates of Service are hereby approved as proper notice.

32. Vesting of Assets (11 U.S.C. § 1141(b), (c)). Except as otherwise provided it the Plan, upon the Effective Date, all property of the Debtor's bankruptcy estate shall

vest in the Reorganized Debtor, free and clear of all Claims, liens, encumbrances, charges and other interests not specifically contemplated by the Plan to either survive the Alta Cast Reorganization Case or to be created or granted in connection therewith. Form and after the Effective Date, the Reorganized Debtor may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as provided in the Plan.

33. Limited Liability Company Existence. Consistent with the Plan, the Debtor will, as a Reorganized Debtor, continue to exist after the Effective Date as a Limited Liability Company ("LLC"), with all the powers of a LLC under applicable law and is authorized to take any action or exercise any right to alter or terminate such existence (whether by merger, dissolution, or otherwise) under applicable law.

34. General Authorizations. The Debtor and their respective Management Team, agents, and attorneys are authorized and empowered to issue, execute, deliver, file, or record any agreement, document or security , including without limitation, any the Plan documents, and to take any action necessary or appropriate to implement, effectuate, and consummate the Plan in accordance with its terms, or take any or all LLC actions authorized to be taken pursuant to the Plan, including Sale Transactions, whether or not specifically referred to in the Plan without further order of the Court.

35. Issuance of New Units. The issuance of membership units as contemplated by the Plan by the Reorganized Debtor is hereby authorized without further act or order under applicable law, regulation, order or rule.

36. Exemption from Certain Taxes. Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, shall not be subject to any stamp, real estate transfer, sales, use, mortgage recording or other similar tax.

37. Final Fee Applications. Unless otherwise ordered by the Court, all entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code (a) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred no later than ninety (90) days after the Effective Date; and (b) shall be paid in full in such amount as are allowed by the Bankruptcy Court, or in accordance with the Plan provisions (i) upon the later of (A) the Effective Date and (B) the date upon which the order relating to the allowance of any such Administrative Expense Claim is entered or (ii) upon such other terms as may be mutually agreed upon between the holder of such an Administrative Expense Claim and the Debtor. The Debtor is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Confirmation Date and until the Effective Date in the ordinary course and without the need for Bankruptcy Court approval. After the Effective Date, the Debtor is authorized to pay compensation for services rendered or reimbursement of expenses incurred by professionals retained by the Debtor in the ordinary course and without the need for Bankruptcy Court approval.

38. Discharge of Claims and Termination of Equity Interests. Except as otherwise provided in the Plan or the Confirmation Order, the rights afforded in the Plan and the payments and distributions to be made thereunder, shall completely satisfy and discharge all existing Claims, and terminate all equity interests, of any kind, nature, or description whatsoever against or in the Debtor or any of its assets or property to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against and equity interests in the Debtor shall be, and shall be deemed to be, discharged, satisfied, released and terminated in full, and all holders of Claims and equity interests shall be precluded and enjoined from asserting against the Reorganized Debtor, its successors and assigns, or any of its respective assets or property, any other or further Claim or equity interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of claim or proof of equity interest and whether or not the facts or legal bases therefore were known or existed prior to the Effective Date. Notwithstanding the above or anything in the Plan, Hays may assert his claims as a setoff or defense to any claims the Debtor had against him.

39. Retention of Causes of Action/Reservation of Rights. Nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, Cause of Action, right of setoff, or other legal or equitable defense which the Debtor's estate had immediately prior to the Commencement Date or thereafter, against or with respect to any Claim left unimpaired by the Plan. The Reorganized Debtor shall have, retain, reserve, and be entitled to assert all such claims, causes of action, rights of setoff, and other legal or equitable defenses which the Debtor had immediately prior to the Commencement Date or thereafter fully as it the Alta Cast Reorganization Case had not be commenced, and all of the Debtor's legal and equitable rights respecting any Claim left unimpaired by the Plan may be asserted after the

Confirmation Date to the same extent as if the Alta Cast Reorganization Case had not been commenced.

40. Notice of Entry of Confirmation Order. In accordance with Bankruptcy Rules 2002 and 3020(c), on or before the Effective Date, the Reorganized Debtor shall give notice of the entry of this Confirmation Order to all creditors and interest holders, the United States Trustee, and other parties in interest, by causing notice of entry of the Confirmation Order (the **"Notice of Confirmation"**) to be delivered to such parties by first-class mail, postage prepaid. The notice described herein is adequate under the particular circumstances and no other or further notice is necessary. With the exception of the Debtor and the United States Trustee any Person desiring to remain on the Debtor's Bankruptcy Rule 2002 service list shall be required to file a request for continued service and to serve such request upon counsel to the Debtor within 30 days subsequent to the Confirmation Date.

41. Notice of Effective Date. Within five (5) Business Days following the occurrence of the Effective Date, the Reorganized Debtor shall file notice of the occurrence of the Effective Date and shall serve a copy of the same on those entities which have filed a notice of appearance and request for service of pleadings in the Alta Cast Reorganization Case.

42. Enforceability. Pursuant to section 1123(a) and 1142(a) of the Bankruptcy Code and the provisions of this Confirmation Order and the Plan shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

43. Modification/Reversal. If any provision of this Confirmation Order is hereafter modified, vacated, or reversed by subsequent order of this Bankruptcy Court or any other court, such reversal, modification or vacation shall not affect the validity of the obligations incurred or undertaken under or in connection with the Plan prior to the Debtor's receipt of

written notice of any such order; nor shall such reversal, modification or vacation hereof affect the validity or enforceability of such obligations. Notwithstanding any reversal, modification or vacation hereof, any such obligation incurred or undertaken pursuant to and in reliance on this Order prior to the effective date of such reversal, modification or vacation shall be governed in all respects by the provisions hereof and of the Plan, and all documents, instruments and agreements related thereto, or any amendments or modifications thereto.

Dated: Wilmington, Delaware
~~January __, 2004~~
March 2, 2004

The Honorable Mary F. Walrath
Chief Bankruptcy Judge, District of Delaware

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